

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

ROBERT E. CHAMBERS
Carlisle, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF H.L.N., A Minor Child,)	
)	
ROBERT E. CHAMBERS,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 32A05-0605-JV-267
)	
REBECCA J. SCHOOLEY,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Jeffrey V. Boles, Judge
Cause No. 32C01-0601-JP-3

September 14, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Robert E. Chambers appeals the denial of parenting time with his daughter, H.L.N.¹ Chambers raises one issue, which we restate as whether the trial court abused its discretion by denying Chambers's request for parenting time. We affirm.

The relevant facts follow. H.L.N. was born on October 28, 1998, to Courtney L. Nail and Chambers. Paternity was not established at that time because Chambers was incarcerated. Chambers was sentenced to sixty-five years in the Indiana Department of Correction on March 24, 1999. On December 12, 1999, guardianship of H.L.N. was granted by the Hendricks County Circuit Court to H.L.N.'s maternal grandmother, Rebecca Schooley.

Chambers filed a Petition for Scheduled Parenting Time and Name Change of a Minor Child on January 12, 2006. In the petition, Chambers argued that he "maintained consistent and meaningful contact with H.L.N. by mail" during his incarceration. Appellant's Appendix at 55. The petition alleged:

* * * * *

4. That Petitioner requests scheduled parenting time, by way of minor child's paternal grandparent Linda S. Chambers, in order for the minor child to continue to develop and maintain a healthy independent relationship with her father.

¹ No response brief was filed by the appellee in this appeal. When an appellee fails to file a response brief, we need not develop her arguments. Santana v. Santana, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999). "However, this circumstance in no way relieves us of our obligation to decide the law as applied to the facts in the record in order to determine whether reversal is required." Blunt-Keene v. State, 708 N.E.2d 17, 19 (Ind. Ct. App. 1999). Rather, we apply a less stringent standard of review in which we may reverse the trial court if the appellant makes a prima facie showing of reversible error. Crafton v. Gibson, 752 N.E.2d 78, 82 (Ind. Ct. App. 2001). "Where an appellant is unable to meet this burden, we will affirm." Id.

5. That, through scheduled parenting time with her paternal grandparent Linda S. Chambers, the minor child's basic needs will further be fulfilled by maintaining and developing meaningful relationships with her two (2) half-sisters, two (2) great-grandparents, and numerous cousins, aunts, and uncles.
6. That Petitioner requests paternal scheduled parenting time to be set for every other weekend, from 6:00 p.m. Friday evening to 6:00 p.m. Sunday evening, and every Sunday morning from 9:00 a.m. to 12:30 p.m.
7. That Petitioner requests additional scheduled parenting time during school breaks; four (4) weeks during the summer break, and one (1) week during the winter break

* * * * *

Id. at 56-57.

Schooley filed a response stating her opposition to parenting time between Chambers and H.L.N., claiming that Chambers did not maintain regular contact with H.L.N. Schooley's response further stated that H.L.N. had no regular contact with her paternal extended family and that, because Chambers is incarcerated, any specifically ordered parenting time "would create a danger to the physical and or emotional health of the child." Id. at 69-70. Citing to Chambers's request that his scheduled parenting time be awarded to his mother, Schooley argued that "any rights which Linda S. Chambers may have, are governed by separate statute and Robert E. Chambers, . . . does not have standing to pursue paternal grandparents visitation rights . . ." Id.

Upon receiving Schooley's response on April 24, 2006, the trial court denied Chambers's petition for parenting time, finding

* * * * *

3. That, given the age and present circumstances of the minor child, it would not be in the best interest of said child to be court ordered to maintain regular parenting time with Robert E. Chambers.
4. That, Robert E. Chambers has no legal standing to pursue any visitation rights or parenting time on behalf of his parents, the paternal grandparents of [H.L.N.] and therefore his request that the court order parenting time or visitation privileges with Linda Chambers, the paternal grandmother, is denied

* * * * *

Id. at 6. Chambers filed a Motion to Reconsider Final Judgment, which the trial court denied.

The issue is whether the trial court abused its discretion by denying Chambers's petition for parenting time. A trial court's determination of visitation issues will be reviewed only for an abuse of discretion, with "a preference for granting latitude and deference to our trial judges in family law matters." Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). "No abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. Lasater v. Lasater, 809 N.E.2d 380, 400 (Ind. Ct. App. 2004). We will neither reweigh evidence nor judge the credibility of witnesses. Kirk, 770 N.E.2d at 307. We set aside judgments only when they are clearly erroneous, and will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. Id. "On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal." Id.

In his Petition for Scheduled Parenting Time filed with the trial court, Smith requested scheduled parenting time “by way of minor child’s paternal grandparent Linda S. Chambers.” Appellants Appendix at 56. The Petition further alleged:

* * * * *

5. That, through scheduled parenting time with her paternal grandparent Linda S. Chambers, the minor child’s basic needs will further be fulfilled by maintaining and developing meaningful relationships with her two (2) half-sisters, two (2) great-grandparents, and numerous cousins, aunts, and uncles.

Id. Chambers’s requests in the Petition necessarily argue for visitation with H.L.N.’s paternal grandmother, not with Chambers. This is evident where the petition requests:

6. That Petitioner requests paternal scheduled parenting time to be set for every other weekend, from 6:00 p.m. Friday evening to 6:00 p.m. Sunday evening, and every Sunday morning from 9:00 a.m. to 12:30 p.m.
7. That Petitioner requests additional scheduled parenting time during school breaks; four (4) weeks during the summer break, and one (1) week during the winter break

* * * * *

Id. at 56-57. Chambers is incarcerated. Thus, it is unreasonable to believe that such a parenting time schedule was intended for Chambers. Rather, the petition clearly requests grandparent visitation.

In Chambers’s appeal to this court, he argues that “a noncustodial parent is entitled to reasonable parenting time.” Appellant’s Brief at 9 (citing Ind. Code § 31-14-14-1 (2004)). Chambers goes on to state that “the court shall not restrict a parent’s parenting time rights unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development.” Id. (citing

Ind. Code § 31-17-4-2 (2004)). While this is statutorily correct, it is a different argument than Chambers made to the trial court. In this appeal, Chambers is arguing for his own statutory right, as H.L.N.'s parent, to parenting time. Because Chambers attempts to raise a different issue on appeal than he raised below in his Petition for Scheduled Parenting Time, he has waived appellate review of this issue. See, e.g., Jamrosz v. Resource Benefits, Inc., 839 N.E.2d 746, 757 (Ind. Ct. App. 2005), trans. denied. (holding that because the appellant attempted to raise different issues on appeal than he raised to the trial court, he waived those arguments on appeal).

Moreover, we conclude that the trial court did not abuse its discretion by denying Chamber's petition because he did not have standing to request grandparent visitation. "The main purpose of standing is to ensure that the party before the court has a substantive right to enforce the claim that is being made." In re J.D.G., 756 N.E.2d 509, 511 (Ind. Ct. App. 2001). Because the record shows that Chambers was seeking parenting time on behalf of H.L.N.'s paternal grandmother instead of himself, we agree with the trial court that Chambers has no legal standing to pursue any such visitation rights or parenting time. Indiana's Grandparent Visitation Statute provides that any petition for grandparent's visitation must "be filed by a grandparent entitled to receive visitation rights." Ind. Code § 31-17-5-3 (2004). Because this statute was "enacted in derogation of the common law, creating rights which had not previously existed, . . . it must be strictly construed." In re J.D.G., 756 N.E.2d at 511. Here, Chambers, not H.L.N.'s paternal grandmother, filed the Petition for Scheduled Parenting Time. Strictly

construing the Grandparent's Visitation Statute, Chambers's petition for scheduled parenting time must be denied.

For the foregoing reasons, we affirm the trial court's denial of Chambers's petition for parenting time.

Affirmed.

KIRSCH, J. and MATHIAS, J. concur